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# M. L. Sears, Joseph Behling, William S. Heitz, Frank A. Salimeno, Robert G. Hartmann, and James L. Lavender, on behalf of themselves and all other taxpayers similarly situated v. Ogden City, a Body Politic, Mayor A. Stephen Dirks, Council of Ogden City, and Donna Adamas, Ogden City Recorder : Brief of Respondent

Utah Supreme Court



Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.
Pete N Vlahos; Attorney for Appellants.
L Kent Bachman; Chief Asst Corporate Counsel; Attorney for Respondents.

IN THE

# SUPREME COURT

OF THE

# STATE OF UTAH



M. L. SEARS, JOSEPH BEHLING, WILLIAM S. HEITZ, FRANK A. SALIMENO, ROBERT G. HARTMANN, and JAMES L. LAVENDER, on behalf of themselves and all other taxpayers similarly situated,

*Plaintiffs and Appellants,*

vs.

OGDEN CITY, a Body Politic, MAYOR A. STEPHEN DIRKS, COUNCIL OF OGDEN CITY, and DONNA ADAMS, OGDEN CITY RECORDER,

*Defendants and Respondents.*

Case No. 13647

## BRIEF OF RESPONDENTS

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF WEBER COUNTY, HONORABLE JOHN F. WAHLQUIST, JUDGE

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## BRIEF OF RESPONDENTS

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## STATEMENT OF THE KIND OF CASE

An action brought by the Appellants asking for declaratory and injunctive relief brought on behalf of the Appellants and all other persons similarly situated as both taxpayers of the City of Ogden and as residents and homeowners in the dedicated subdivision of Ogden City.

The Appellants have sought a determination as to the validity of an ordinance passed by the Ogden City Council closing and vacating a public street which the Appellants believe was a part of a dedicated subdivision known as the Argonne Park Plat, and the giving of the closed and vacated public street to the Board of Education of Ogden City without any compensation whatsoever being paid to the City of Ogden or to the Appellants, wherein the Board of Education of Ogden City was, and is, the only abuttting landowner on said dedicated and said closed and vacated public street; and whether said action by the City of Ogden and by the Ogden City Council was a valid exercise of the authority and power of the Ogden City Council and; further, whether the closing off and taking away of a dedicated street in an allegedly private plotted addition without the consent of the qualified electors of the City of Ogden or the homeowners of a blighted subdivision without compensation constitutes the taking of property without due process of law.

The Appellants are seeking the reversal of a lower court decision wherein the Respondents were favored with the dismissal of the Appellants', then Plaintiffs' action. The lower court at a hearing on a motion for temporary restraining order and on a complaint for declaratory judgment held that the action of the Ogden City Council in the closing of the street and the giving of the same by Quit Claim deed to the Board of Education of Ogden City was not an abuse of authority o fthe Ogden City Council acting for the City of Ogden, and that the

City of Ogden had complied with the charter upon which it was founded together with the statutes of the State of Utah which set forth the procedures as to public hearings and as to the procedure for the vacating of a public street where the exigency existed in the public interest and with public good and welfare.

## RELIEF SOUGHT ON APPEAL

The Respondents seek by defendaing this action on appeal a sustaining of the dismissal in the lower court and an order from the Supreme Court of the State of Utah dismissing the action of the Appellants as set forth in their demand to this Court.

## STATEMENT OF FACTS

On July 27, 1973, a petition per letter was received from William L. Garner, Superintendent of the Board of Education of Ogden City, requesting that the Ogden City Council close 29th Street between Tyler Avenue and Harrison Boulevard, which street divides the school building complex from the athletic field complex of the Ogden High School, (R-85). This petition did come before the Ogden City Council on August 2, 1973. At this time, the City Manager, Richard L. Larsen, was given the responsibility to make a study concerning the possible closing as requested by the Board of Education of Ogden City, (R-119-20). Mr. Larsen requested his staff, including the Traffic Co-ordinator, the Ogden City Planning Staff, and the Public Works Department, to give to him

a preliminary opinion as to the possible effects of a closure of 29th Street, (Defendants' Exhibit 2) (R-86). On September 6, 1973, the petition for the closing and vacating of 29th Street was once again brought before the Council and was referred to the Ogden City Planning Commission for its study and recommendations. On November 7, 1973, the request to vacate that portion of 29th Street between Harrison Boulevard and Tyler Avenue was on the agenda of the Ogden City Planning Commission. On December 3, 1973, the Ogden City Planning Commission received a memorandum from Graham F. Shirra, Planning Director of the Ogden City Planning Commission, Rulon H. Sorenson, Director of Public Works, and Donald Godfrey, Traffic Engineer, in regard to the vacation of 29th Street through the Ogden High School campus at which time the pros and cons of the closing of the street were discussed without a firm recommendation either for or against closing being the conclusion of the staff after extensive surveying, (Defendants' Exhibit 3) (R-46-48).

Meanwhile, on November 29, 1973, an ordinance was proposed at a regular meeting of the Council of Ogden City for the vacating of 29th Street as a public street between Harrison Boulevard and Tyler Avenue. December 20, 1973, was set as the time for the public hearing on the proposed ordinance to close 29th Street, which public hearing was such that the Ogden City Planning Commission and the Ogden City Council did hold a joint hearing with the public at Ogden High School adjacent

to the street proposed to be vacated, (R-19-20) (R-102). On January 10, 1974, the Ogden City Council did entertain a motion to vacate 29th Street between Harrison Boulevard and Tyler Avenue, which motion was passed and was based upon the public benefit, for the following reasons:

1. It will improve the safety of vehicles and children on Harrison Boulevard by allowing relocation of the ball diamond and tennis courts so balls will not go into the boulevard with children going after them.

2. It will improve the flow of traffic by reducing the crossings at 29th Street and Harrison Boulevard where there is no traffic light, and moves the traffic to 28th and 30th Streets at Harrison Boulevard where traffic signals are located.

3. It will increase the safety of students and those home activities at Ogden High School by making it so they can get to school without crossing a public street.

4. It substantially increases the safety and convenience of students and faculty of Ogden High School by removing a public street from this campus allowing safe and easy access from the school to its other facilities.

5. It doesn't interfere with access to the other land east of the school or elsewhere, (R-19-20).

Pursuant to the Ogden City charter and the laws of the State of Utah, the ordinance, having been voted upon,

was thereafter ordered to be published and to become final twenty days after its final publication. The Board of Education of Ogden City is the abutting landowner on both sides of 29th Street between Tyler Avenue and Harrison Boulevard in Ogden, Weber County, Utah; and, as such, is the individual to whom the property would be deeded upon its vacation by Ogden City according to law, (R-19-20).

The Ogden City Planning Commission, in a regular session on January 2, 1974, did adopt a resolution that the request of the Board of Education of Ogden City for the closure of the 29th Street area be denied, in that the advantages for the closure of said street were not sufficient to warrant a closure of an established street, (Defendants' Exhibit 5) (R-100). The Planning Commission Chairman did, however, conclude that the reason for the denial request and its granting by the Ogden City Planning Commission was not because of any feelings either pro or con for the project but that they did feel that they had not had sufficient information to make an adequate study so that they could have a more proper recommendation to the Ogden City Council, (R-103).

Great opposition was voiced against the proposed project for the vacating of 29th Street, based upon conclusions that 29th Street was the lifeline for those citizens of East 29th Street to traverse to and from their homes and their businesses, but that such an objection was not substantial inasmuch as other routes on 28th Street and 30th Street existed, which streets could take the addi-

tional flow of traffic and thereby not develop into a traffic problem by the vacating of 29th Street.

## ARGUMENT

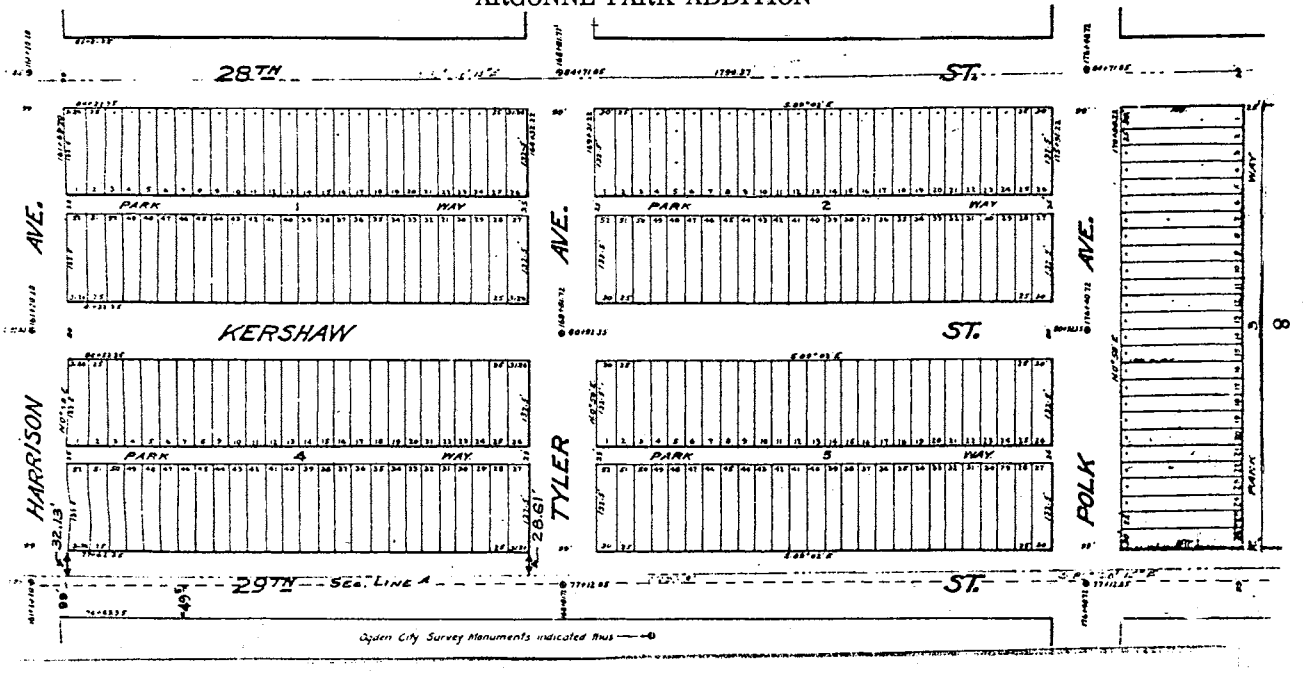
### POINT I.

### APPELLANTS DO NOT HAVE AN ABSOLUTE PERPETUAL RIGHT IN A DEDICATED STREET.

The Appellants have alleged that they are persons who are homeowners or are purchasers of lots which were originally dedicated in the Argonne Park Plat, which plat dedication was to have been recorded on February 1, 1921, in the Weber County Recorder's office. The full extent of the dedication plat of the Argonne Park was not brought to a factual determination at the hearing on the temporary restraining order on February 7, 1974, because of the court's determination that the City of Ogden had fully complied with all requirements for the vacating of a street and, as such, with the District Court subsequently granting a motion to dismiss said complaint. The Argonne Park addition, however, as reduced here, indicated that theaddition covered an area from Harrison past Polk Avenue between 28th Street and 29th Street in Ogden. The area between 28th Street and 29th Street and Harrison Boulevard and Tyler Avenue consisted of the area on which the Ogden High School was built in the mid 1930's, (opened in September, 1937). The property south of 29th Street between Harrison Boulevard

SUPREME COURT EXHIBIT 1

ARGONNE PARK ADDITION



and Tyler Avenue to and including 30th Street consisted likewise of property owned by the Board of Education of Ogden City on which the athletic fields were located, (R-18 (See Supreme Court Exhibit 1).

The Appellants cite *Tuttle* vs. *Sowadzkin, et al.*, 126 P. 959 (1912), which case they make reference to, as being the determining case which declared the ownership rights of individual lot holders in a dedicated plat. This Court considered a fact situation where Salt Lake County had received the dedication of a street entitled Wabash Avenue between State Street and 2nd East Street. The county after receiving the dedication of said street, did not improve said street and pursuant to Comp. Laws 1907, Section 1116, failed to use or work on said road for a period of five years, and as such did abandon said dedicated street, and as such did lose the dedication of the same. The Court in this case was making a ruling as to subsequent purchasers of property abutting said dedicated portion of street as to their rights as abutting landowners subsequent to the abandonment by Salt Lake County of said dedicated portion of the street. This Court held that there was a distinction between the owners of property abutting said street prior to the abandonment by Salt Lake County of said portion of said street, and those owners of property subsequent to said abandonment, in that it found that there existed two easements, a private easement and a public easement; and further held that a private eastment in a highway will continue to exist after the public easement has become

extinct only in favor of those who owned a private easement, when the public one was extinguished, since, while a private easement may survive the public easement, it cannot "survive" unless both existed at the same time. In this case, contrary to what Appellants perceive the holding to be, the court dealt with abutting landowners, those owners being property owners of record who owned property which is adjacent to or abuts on a street. In this regard, they did not make reference to a whole subdivision or a whole dedicated plat area, but only to those individuals who own abutting property on a dedicated street.

This Court further held that those abutting landowners who owned the property prior to the abandonment by the public entity did own and possess a private easement on said portion of said highway or street, which public easement gave to them a right which could not be taken from them without due compensation for the value of said right.

In the case now before this Court, the abutting landowner is the petitioner who requested that the City Council of Ogden City and all Defendants vacate 29th Street between Harrison Boulevard and Tyler Avenue, (R-85). This would seem to negate the responsibility of Ogden City giving just compensation to the abutting landowner when thea butting landowner is the petitioner requesting vacation of said street, and as such, who is not making a demand against said City for compensation. Further, the petitioner is the same individual who, by modifying

29th Street into a full campus, is in effect relinquishing its right of private easement over its own property.

In Appellants' brief, *Sowadzki* vs. *Salt Lake County*, 104 P. 111, (1909), was cited, which case was a predecessor to *Tuttle* vs. *Sowadzki*, cited supra, wherein the Court did hold and make a distinction as to the public use being that which was dedicated to the City or the County as a street and that a conveyance in fee for said dedicated purpose is a limited or a determinable fee and is created only for a special purpose or purposes only. Once again, this cited case deals with abutting landowners, and as such explores the rights of said abutting landowners to be compensated and to have their rights declared.

The Appellants rely on *Boskovich, et al.* vs. *Midvale City Corporation*, 243 P. 2d 435, (1952), which case is grossly similar to the case now before this Court in that a portion of a street was vacated upon the petition of the Board of Education. In the *Boskovich* case, the City of Midvale failed to follow statutory procedure in the giving of a proper notice, the holding of a fair hearing, and the failure to consider substantial rights of those involved. This Court further ruled, even if there may have been proper due process roceedings, that the public and private easements were distinct, and that the private easement would remain and would have to be compensated for in relation to those individuals within the subdivision plat dedication, even though such compensation may be meager as such. In that case, the facts distinguish it from the instant case in that the Plaintiff, *Boskovich*, re-

sided next to a school owned by the Board of Education and abutted on a street that dead-ended into an 11-foot alleyway. The vacation of the abutting street in front of the school was such as to cul-de-sac the Plaintiff. The Court held that the Plaintiff would still have his right of private easement because of the extraordinary circumstance of having been dead-ended on a street which had been to him a street which would, or could, be traversed along that dedicated and vacated street to an alleyway and along said alleyway to an exit from the subdivision. The instant case distinguishes itself from the*Boskovich* case in that the abutting landowner, who is the Board of Education of Ogden City, is not so located that it would cul-de-sac any of the Plaintiffs' nor prevent their access along and over streets adjacent thereto, which streets because of the closing of the instant street would not be brought to an excessive traffic condition. Further, the Appellants rely on the fact that the dedicated street is wholly within a subdivision dedication existing from 1921, which fact relates only to approximately 32.13 feet of a 99 foot right-of-way along 29th Street between Harrison Boulevard and Tyler Avenue, (see Supreme Court Exhibit 1). Thus, the facts that there is no cul-de-sacing of the Plaintiffs and that any portion of the dedicated streetway is only partial dedication would distinguish it from the *Boskovich* case. This Court in *Boskovich* did set as authority for its finding the *Sowadzki* cases where the issue was as to abutting landowners and where this was the main issue in action without an extension of the same to all the members of the subdivision and all the

members of the area and all the citizens of the City of Ogden, which extension, if permitted, would in effect, prevent the City of Ogden, the City of Salt Lake City, or any city or county public entity from acting in the best interest and for the public good of the citizens of those respective public entities.

The instant case is one where the charter provisions of Ogden City having been complied with and the later state statutory sections of 10-8-8, Utah Code Annotated, as amended 1953, and the series of statutes commencing thereafter with 10-8-8.1, which statutory sections were enacted in 1955, were not in and of themselves inconsistent to deprive those involved with a reasonable notice, a fair hearing, and a substantial opportunity to consider the rights of all.

The Appellants attempt further to make a distinction that in *Stringham* vs. *Salt Lake City*, 201 P. 2d 758, (1949), and the further citing of *McQuillan, Municipal Corporation*, 2nd edition, Volume 3, Section 981, p. 217, and *Thompson* vs. *Smith*, 155 Vt. 367, 154 S. E. 579, where it is attempted to isolate the privilege of the City being to control the streets for the benefit of the entire public, which privilege is distinguished from a right in said streets even after dedication. This argument goes to the effect that the City as at a loss to vacate any street, alley, or thoroughfare unless there is a public exigency or facts which would indicate that the public would be protected. In the instant case, such was the factual situation where the public rights and interest were to be benefited not

only to those Plaintiffs, but to all citizens of Ogden City and all citizens whose children did attend the school complex located adjacent to 29th Street between Harrison Boulevard and Tyler Avenue. These citizens were to be benefited not only through protection in preventing serious accidents to result in the crossing of said street, but to have the beneficial opportunity to have an athletic complex that is not separated by a street but is joined for the benefit of the students, as well as those in the surrounding neighborhoods and the City public in general, (R-20).

The Appellants feel that the lower court erred when it cited *Stone* vs. *Salt Lake City*, 356 P. 2d 631, (1960). It was, however, cited as an illustration where the Court held:

> There is no merit in this case insofar as statutes are concerned. I believe the statutes have been ruled on by the Utah Supreme Court in *Stone* vs. *Salt Lake City*, and other decisions in 1960, and later. There is no question that a legislative body, either County Commissioners or City Fathers can vacate dedicated streets if they follow normal procedures; otherwise, government can never change and that this can be done (R-123).

In the *Stone* case this Court ruled on a fact situation when the city of Salt Lake City conveyed two parcels of city-owned land for the construction, by the United States Government, of a Federal Building; and the Court held that, "the essential of procedural requirements, sale by

city of its land is that there be notice, a reasonable opportunity for those interested to appear and be heard, and fairness in the procedure in connection with the sale." This was the sole purpose why the lower Court did cite the *Stone* case, and as such, the Court merely wanted to show that there had been a reasonable procedure followed consistent with the charter of Ogden City and the laws of the State of Utah.

## POINT II.

### THE APPELLANTS WERE NOT DEPRIVED OF PROPERTY RIGHTS WITHOUT DUE PROCESS OF LAW.

Appellants cite numerous cases commencing with *Hall* vs. *North Ogden City*, 166 P. 2d 221, (1946), and a series of cases commencing with 1909 up to 1970 in an attempt to show by these Utah cases aswell as the cases of other jurisdictions, that there exists the need to fully compensate all property owners who may be involved when a city, county, or any municipal form of government exercises dominion over the rights of streets and thoroughfares. The cases were cited to show that due compensation must be given to those individuals affected by a vacating of a street or thoroughfare, which street or thoroughfare these same people were to have had a property right in. None of these cases fit into the fact situation that is presently before this Court where a street running between property owned by the Board of Education of Ogden City, which vacated street has as its sole and only

abutting landowners this same Board of Education of Ogden City, which Board of Education being the Petitioner, is asking for the vacation of said street. It is a given and foregone conclusion at law in the State of Utah that property may not be taken without due process resulting in due compensation to thoce individuals who have a property right in that property which is being taken from them.

The Appellants submit the argument that all individuals throughout Ogden City, as well as the Plaintiffs, have a right in said street, which would, under this conclusion, mean that any street, alley, or any thoroughfare with a public right were to be vacated by the City of Ogden or any municipality, that all citizens of that city would have a property right existing within themselves which property right would have value attached to it that through a condemnation action would be such as to compensate each individual citizen of a municipality. It is more reasonable to look at the fact situation that is before this Court, which fact situation shows and is traced tto the earlier decisions on dedicated streets as far back as the *Sowadzki* cases, supra. There the rights of adjoining or abutting landowners were the only rights which were to be fruitful in receiving compensation when said rights were taken from those abutting landowners by method of legislative action. In Section 10-8-8.5, Utah Code Annotated, as amended 1955, and as enacted by the Legislature in 1955, the effect of the vacation of a street is to relinquish the City's fee therein, "but the

right-of-way and easements therein, if any, of any lot owner and the franchise rights of any public utility shall not be impaired thereby." This can only be interpreted to mean the single abutting owner's rights-of-way shall not be impaired nor his easement taken from him. The instant case is such that the abutting landowner is the petitioner for vacation of said street and as such is relinquishing his rights.

The Appellants cite the dedication plat terminology that said streets in said dedication plat shall "remain public thoroughfares forever." What of the needs of public exigency? What of the rights vested in the cities by the legislatures of both the state and the city, granting to the municipalities the right of condemnation and the right to vacate streets for the public benefit and in the public interest. It is submitted that if there is an individual having a right to said vacated street, which right is paramount to that of the City of Ogden, than that individual should be compensated; but that inidividual should not be, as the Appellants indicate, *all* citizens similarly situated, and *all* citizens that have traversed along 29th Street between Harrison Boulevard and Tyler Avenue. The reason would have it that only those abutting landowners who are affected should receive compensation, consistent with the *Sowadzki* precedent cases.

Further, as cited at another place within this brief, only the 32.13 feet on the north side of 29th Street of a street which is divided down at center in a 49.5′ median line was part of the Plaintiffs' and Appellants' question

as to a dedication to the City in 1921 and subsequent to the vacation of that portion in 1974, (see Supreme Court Exhibit 1). The whole of the 99 feet is not in question. The whole of the 99 feet of 29th Street was based on other Quit Claim deeds given to the City of Ogden over the years, and not solely from those individuals who did acquire whatever rights they might have in the Argonne Park addition to Ogden City.

Appellants cite as another argument that the agencies of the Defendant, namely, the Ogden City Planning Commission, did fail to hold a public hearing consistent with the Municipal Planning Enabling Act, 10-9-19, Utah Code Annotated, 1953, et seq., which act itself provides for uniform planning, the holding of public hearings, and the development of communities in a way that is consistent with the maintaining of orderly communities. Through the testimony of the chairman of the Ogden City Planning Commission it was established that a joint meeting and hearing with the Ogden City Council was held on December 20, 1973, as per the minutes of the meeting of the Council of Ogden City on that same date, (R-19). After said public hearing, the Ogden City Planning Commission did recommendf to the Ogden City Council that said petition for vacation be denied, (R-100). The recommendation for denial was based on the fact that there had been a possible lack of information given to the Ogden City Planning Commission members for them to make a positive finding, (R-102).

Appellants with delight cite that the Ogden City

Planning Director, Graham Shirra, the Public Works Director, Rulon Sorenson, the Traffic Engineer, Donald Godfrey, and R. L. Larsen, the Ogden City Manager, opposed the vacating of 29th Street. The fact as cited in the testimony in the transcript of said hearing was that Graham Shirra, Rulon Sorenson, and Donald Godfrey joining in a letter dated December 3, 1973, which letter is marked as evidence, (Defendants' Exhibit 3), wherein it is suggested that because of the pros and cons that the above three gentlemen and staff members of Ogden City's Planning, Public Works, and Traffic Department, recommended neither adoption of the petition or denial of the petition but stated that the City Council of Ogden City could decide in what direction the citizens of Ogden would be best benefited, which fact is their prerogative, (R-96) (R-108-109) (R-110).

The City Manager, R. L. Larsen, based upon his position as a member of the Ogden City Planning Commission, did request denial of said petition based on his reason that he lacked complete information for him to make a proper decision.

For some reason or other, the Ogden Standard Examiner editorials are cited by the Appellants as well as petitions indicating the feelings of many citizens east of 29th Street, 28th Street, and 30th Street above the vacated 20th Street section. The citing of these particular feelings do not represent the need of the public, which was considered by the City Council, which represents not only those citizens on 29th Street but the citizenry of

the whole of the City of Ogden, and as such, are merely documents as so entitled and are of no probative value.

In *Robinette* vs. *Price*, 280 Pacific 736, (1929), in a case where a street was closed and the property owners' means of ingress, egress were interfered with, this Court held that merely the depriving of the Plaintiff of his direct route to and from the main business portion of the City causing a depreciation of property value as well as rendering rental more difficult in view of decreasing rental value did not constitute compensable damages.

Further, in the *Springville Banking Company* vs. *Burton*, 349 Pacific 2d 157, a 1960 case which itself dealt with eminent domain, held, in a fact situation dealing with the State Tax Commission impairing the right of ingress and egress from Plaintiffs' property along a state highway, that "if the sovereign exercises its police power reasonably and for the good of all the people when constructing highways, consequential damages such as those alleged here are not compensable; on the other hand, if public officials act arbitrarily and unreasonably causing, for example, total destruction of the means to get in and out of one's property, without any reasonable justification for doing so in the public interest, in a manner that imposes a special burden on one not shared by the public generally, principles of equity no doubt could be evoked to prevent threatened action of such character or to remove any instrumentality born of such conduct." The foregoing cases, although dealing with condemnation actions of the State of Utah, are such that compensation

was denied where private rights existed for both ingress and egress, which is what the Appellants are attempting to have this Court rule upon. These cases stand as precedent when no compensation should be granted where the the mere ingress and egress of a direct route is interfered with and when there are additional routes of travel into that subdivision or platted area in question. Therefore, it is submitted by the Respondents that although it is believed that only the abutting landowners in this situation shoud be compensated for any loss of a private right, the fact of ingress and egress for other owners within this same area is not a compensable right; and the facts, that there were adequate notices, proper hearings and strict adherence to the charter of the City of Ogden and the laws governing the vacating of a street, are such that they have been complied with, and in no way have the rights of those other individuals been abused or interfered with.

## POINT III.

### THERE IS NO FACTUAL FINDING THAT RESPONDENTS HAVE ABUSED THEIR DISCRETION OR ACTED FRAUDULENT OR IN ANY ILLEGAL MANNER IN THE VACATING OF SAID STREET.

In the vacating of 29th Street between Harrison Boulevard and Tyler Avenue, the lower Court did hold in its bench ruling that all applicable laws had been complied with and that the finding of the Court was that

this had been al egislative action and that the judiciary had no right to set aside the said vacation unless the statutes and ordinances of the City of Ogden had been abused. In *Springville Banking Company* vs. *Burton*, supra, the Court held that if the public officials did act arbitrarily or unreasonably then question would be raised as to the act in question. In *Rhees* vs. *D. E. Mund*, 245 P. 2d 284, (1952), in an Arizona Supreme Court decision, the Court held, "The City Council of the City of Phoenix in vacating and abandoning the alley in question acted in a legislative capacity, and the Court cannot question the wisdom or discretion or advisability of its action except for fraud or other illegality or absence of jurisdiction to abandon." Further, in *People* vs. *City of Pomona*, 200 P. 2d 176, (1949), the Court held in a case involving the vacating of a street that Appellant did have the burden of demonstrating that sufficient evidence was produced to show that the City Council abused its discretion in vacating the public street for purposes other than for public good and welfare.

The instant case exemplifies that the City Council of the City of Ogden did exercise proper discretion in vacating the street for proper public purposes and for the benefit of all citizens. The charter of the City of Ogden, being the charter law under which the City of Ogden must function, and the laws of the State of Utah, with regard to the vacating of a street for a public purpose, are consistent. Once a hearing has been held after proper notice has been given to all citizens and the rights

of all have been taken into consideration, the City Council of the City of Ogden does have authority and did, through a legislative action, vote for the closure of 29th Street between Harrison Boulevard and Tyler Avenue, thus, not acting arbitrarily or unreasonably or in fraud or illegally or in absence of jurisdiction in the carrying out of this public interest action.

## CONCLUSION

It is hereby respectfully submitted to the Court that the issues are squarely met, that the Respondents have complied with the laws of the State of Utah and have complied with the granting to all parties reasonable notice, a fair public hearing, and a consideration of all issues relating to the vacation of 29th Street between Harrison Boulevard and Tyler Avenue in Ogden, Weber County, Utah. There is no evidence that there had even been any abuse of discretion or that there had been fraud or illegality on the part of the Respondents. The charter of Ogden City, together with the laws of the State of Utah have been fully complied with. The only cases in point deal with abutting landowners where an abutting landowner did raise a complaint and where this court ruled in favor of the abutting landowner and directed that due compensation, how much or how little, not being resolved, be tendered to the abutting landowners. Our situation is one where the abutting landowner is a party requesting dedication. He receives a deed to that property belonging to the City of Ogden which abuts on his property form-

erly known as that land between 29th Street and Harrison Boulevard.

It is requested by the Respondents that the complaint and petition before this Court of the Appellants be dismissed and the lower Court's decision in this matter be affirmed.

Respectfully submitted,

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